

**48-2c-1214. Election to purchase in lieu of dissolution.**

(1) In a proceeding under Subsection 48-2c-1210(2) to dissolve a company, the company may elect, or if it fails to elect, one or more members may elect to purchase the interest in the company owned by the petitioning member at the fair market value of the interest, determined as provided in this section. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) (a) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the petition in a proceeding under Subsection 48-2c-1210(2) or at any later time as the court in its discretion may allow. If the company files an election with the court within the 90-day period, or at any later time allowed by the court, to purchase the interest in the company owned by the petitioning member, the company shall purchase the interest in the manner provided in this section.

(b) If the company does not file an election with the court within the time period, but an election to purchase the interest in the company owned by the petitioning member is filed by one or more members within the time period, the company shall, within 10 days after the later of the end of the time period allowed for the filing of elections to purchase under this section or notification from the court of an election by members to purchase the interest in the company owned by the petitioning member as provided in this section, give written notice of the election to purchase to all members of the company, other than the petitioning member. The notice shall state the name and the percentage interest in the company owned by the petitioning member and the name and the percentage interest in the company owned by each electing member. The notice shall advise any recipients who have not participated in the election of their right to join in the election to purchase the interest in the company in accordance with this section, and of the date by which any notice of intent to participate must be filed with the court.

(c) Members who wish to participate in the purchase of the interest in the company of the petitioning member must file notice of their intention to join in the purchase by electing members, no later than 30 days after the effective date of the company's notice of their right to join in the election to purchase.

(d) All members who have filed with the court an election or notice of their intention to participate in the election to purchase the interest in the company of the petitioning member thereby become irrevocably obligated to participate in the purchase of the interest from the petitioning member upon the terms and conditions of this section, unless the court otherwise directs.

(e) After an election has been filed by the company or one or more members, the proceedings under Subsection 48-2c-1210(2) may not be discontinued or settled, nor may the petitioning member sell or otherwise dispose of his interest in the company, unless the court determines that it would be equitable to the company and the members, other than the petitioning member, to permit any discontinuance, settlement, sale, or other disposition.

(3) If, within 60 days after the earlier of the company filing of an election to purchase the interest in the company of the petitioning member or the company's mailing of a notice to its members of the filing of an election by the members to

purchase the interest in the company of the petitioning member, the petitioning member and electing company or members reach agreement as to the fair market value and terms of the purchase of the petitioning member's interest, the court shall enter an order directing the purchase of the petitioning member's interest, upon the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in Subsection (3), upon application of any party, the court shall stay the proceedings under Subsection 48-2c-1210(2) and determine the fair market value of the petitioning member's interest in the company as of the day before the date on which the petition under Subsection 48-2c-1210(2) was filed or as of any other date the court determines to be appropriate under the circumstances and based on the factors the court determines to be appropriate.

(5) (a) Upon determining the fair market value of the interest in the company of the petitioning member, the court shall enter an order directing the purchase of the interest in the company upon terms and conditions the court determines to be appropriate. The terms and conditions may include payment of the purchase price in installments, where necessary in the interest of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses awarded by the court, and an allocation of the interest in the company among members if the interest in the company is to be purchased by members.

(b) In allocating the petitioning member's interest in the company among holders of different classes of members, the court shall attempt to preserve the existing distribution of voting rights among member classes to the extent practicable. The court may direct that holders of a specific class or classes shall not participate in the purchase. The court may not require any electing member to purchase more of the interest in the company owned by the petitioning member than the percentage interest that the purchasing member may have set forth in his election or notice of intent to participate filed with the court.

(c) Interest may be allowed at the rate and from the date determined by the court to be equitable. However, if the court finds that the refusal of the petitioning member to accept an offer of payment was arbitrary or otherwise not in good faith, interest may not be allowed.

(d) If the court finds that the petitioning member had probable ground for relief under Subsection 48-2c-1210(2)(b) or (2)(d), it may award to the petitioning member reasonable fees and expenses of counsel and experts employed by the petitioning member.

(6) Upon entry of an order under Subsection (3) or (5), the court shall dismiss the petition to dissolve the company under Subsection 48-2c-1210(2) and the petitioning member shall no longer have any rights or status as a member of the company, except the right to receive the amounts awarded to him by the court. The award is enforceable in the same manner as any other judgment.

(7) (a) The purchase ordered pursuant to Subsection (5) shall be made within 10 days after the date the order becomes final, unless before that time the company files with the court a notice of its intention to adopt articles of dissolution pursuant to Section 48-2c-1204. The articles of dissolution must then be adopted and filed within 60 days after notice.

(b) Upon filing of articles of dissolution, the company is dissolved and shall be wound up pursuant to Part 13 of this chapter, and the order entered pursuant to Subsection (5) is no longer of any force or effect. However, the court may award the petitioning member reasonable fees and expenses in accordance with the provisions of Subsection (5)(d). The petitioning member may continue to pursue any claims previously asserted on behalf of the company.

(8) Any payment by the company pursuant to an order under Subsection (3) or (5), other than an award of fees and expenses pursuant to Subsection (5)(d), is subject to the provisions of Sections 48-2c-1005 and 48-2c-1006.

Enacted by Chapter 260, 2001 General Session